

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 869 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO

2. To be referred to the Reporter or not? NO

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?NO

5. Whether it is to be circulated to the Civil
Judge ?NO

SURESHBHAI BHIMJIBHAI MER

Versus

STATE OF GUJARAT

Appearance:

MR KJ KAKKAD for Petitioners

MR NIGAM SHUKLA ADDL. PP for Respondent No. 1

MR JM PANCHAL for Respondent No. 5

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 28/04/97

ORAL JUDGEMENT

By way of this application under Article 226 of the Constitution of India, the petitioner has prayed the following reliefs :-

"{A} Any writ, order or direction against the respondents commanding the cognizance of the offences committed by the responsible police officers qua the petitioners may please be issued in the interest of justice.

{B} Any writ, order or direction against the learned Judicial Magistrate First Class, Rajkot for taking cognizance of the offences complained by the petitioners against the respondent may please be issued in the interest of justice.

{C} Any writ, order or direction may please be issued commanding the respondents to restore the house of the petitioners without any delay in the interest of justice.

{D} Any writ, order or direction may please be issued against the respondents ordering to pay the compensation of minimum of Rs. 5 lakhs to each of the petitioners for acting in violation of the provisions of Article 21 of the Constitution of India in the interest of justice.

{E} Pending admission and final hearing of this petition, the cognizance of the offence committed by the responsible police officers qua the petitioners may please be issued in the interest of justice by directing the investigation through the High Officer in Rank than the Police Commissioner on the basis of the statements made by the petitioners before the learned Judicial Magistrate First Class at Rajkot.

{F} Pending admission and final hearing of this petition, the cognizance of the offences committed by the responsible police officers qua the petitioners may

please be issued in the interest of justice by directing the investigation by the learned Judicial magistrate First Class at Rajkot in the basis of the statements made by the petitioners before the learned Judicial Magistrate First Class at Rajkot and the medical evidence on record.

{G} Pending admission and final hearing of this petition, the licence may please be ordered to be restored cancelling the cancellation of the licence of Revolver by respondent No. 2 in the interest of justice.

{H} Pending admission and final hearing of this petition, the respondents No. 2 may be directed to restore the possession of the house of the petitioners forthwith by making necessary panchnama through the independent panch witnesses of the locality in the interest of justice.

{I} Any other writ, order of direction may please be issued which may be deemed just and proper in favour of the petitioners in the interest of justice."

Petitioner says that he is a Customs Inspector. The Court awarded an interim maintenance on a complaint filed by his wife, which was not complied with, and therefore, police went to his house to arrest him on 7th June, 1996. Arrest was resisted by the petitioner. It is alleged that the petitioner gave a pipe blow on the head of the police inspector and gave beating to others. It is also alleged that the other family members also supported the petitioners. Thus, a case was registered against the petitioner and others as C.R No. 185 of 1996 for the offences punishable under Sections 307, 333, 332, 34 of IPC and Section 114 of the Bombay Police Act. The petitioner made a complaint that in fact the police acted in a high handed manner and they gave him beating. It is also alleged that the women folk of the family was also tortured by the police. There are serious allegations that the police acted in a high handed manner, even to the extent that the hymen of some of the ladies were ruptured. Say of the petitioner is that he was not produced before the learned Magistrate and he was straightway taken to the hospital. Petitioner was

produced before the learned Magistrate on 12th June, 1996. He made certain statements with respect to the incident of 7th June, 1996. He, however, stated that he will file a detailed complaint later on as his mental condition was not good.

Mr. Kakkad, the learned advocate for the petitioner submits that inspite of the fact that a complaint has been made to the learned Magistrate with respect to the police atrocities, nothing has been done. This Court has obtained comments from the learned JMFC, Rajkot. It is stated by the learned Magistrate that the learned Sessions Judge, Rajkot vide Orders dated 3-7-1996, in exercise of powers conferred by para 14 (6) of the Criminal Manual, has directed a magisterial inquiry into the complaint filed by Suresh Bhimjibhai Mer & Others. It is also pointed out that bailable warrant has been issued against the police inspector.

Having heard the learned counsels appearing for the respective parties, in my view, this matter calls for no interference by this Court in exercise of powers under Article 226 of the Constitution of India. It is not in dispute that no First Information Report with respect to the incident on 7th June, 1996; as alleged by the petitioner, has been filed. It is stated by Mr. Kakkad, the learned advocate for the petitioner that the police is not registering the case as the allegations are against the police officers. This appears to be only apprehension of the petitioner. There is nothing to show that petitioner has made any efforts to lodge the First Information Report. In case the police does not register information of a cognizable offence, it is always open for a private party to file a complaint before the Court and seek direction for investigation. Admittedly, this has also not been done. The grievance of Mr. Kakkad, the learned advocate for the petitioners is that the learned Magistrate has issued bailable warrant only against one, and therefore, he has been left with no remedy. In my view, the contention is misconceived. Be that it may, if petitioner has got any grievance against the said order of the learned Magistrate, he can challenged the same by appropriate remedy available under the law.

It is next contended by the learned advocate that petitioner is entitled to compensation. The learned advocate has referred to certain decisions of the apex court. There is no dispute to the proposition that in a fit case this Court has power to grant compensation even at a stage where the investigation. But in this case, as

already stated, the petitioner has neither made any effort for filing the First Information Report or any proper complaint before any Court. On the contrary, there are serious allegations against the petitioner of obstructing the public servant in discharge of their official duty. There is also allegation that the petitioner gave pipe blow on the head of the police officer. In view of this petitioners contention can not be entertained at this stage.

In view of the aforesaid, I find no merits in this case, and therefore, the same is accordingly rejected. Notice discharged.

Prakash*